IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.573 OF 2005

Shri.Lalchand Panjumal Kukreja
and Ors. ..Petitioners

Vs.

Shri.Haresh Dhanrajmal
Thadhani & Anr. ..Respondents

....

Mr.D.C.Mishra Advocate for Petitioners
Mrs.M.M.Deshmukh A.P.P. for State

....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : AUGUST 14,2006

P.C.

1. Heard the learned advocate for the petitioners and the learned A.P.P. for the State. None appears for the respondent-original complainant though served.

2. The petitioners are seeking quashing of process issued by the learned Judicial Magistrate, F.C.Ulhasnagar in C.C.No.1052 of 2003. The said case is under Sections 323, 448, 504, 506 r.w. 34 of IPC.

3. Being aggrieved by the order of the learned Magistrate issuing process against the petitioners,

the petitioners preferred a revision before the learned Additional Sessions Judge at Kalyan. By order dated 10.12.2004, the said revision came to be dismissed on the ground that the learned Sessions Judge does not have the power to entertain an application for recall of process. From the order of the learned Sessions Judge, it is seen that the learned Sessions Judge was of the opinion that in view of the decision of the Supreme Court in the case of **Subramaniam Sethuraman Vs. State of Maharashtra and another** reported in **2005(1) Mh.L.J.626,** the Sessions Court could not entertain an application for quashing of process and the only remedy available to the aggrieved person, was an application under Section 482 of Cr.P.C. In the case of **V.K.Jain and others Vs. Pratap V.Padode** reported in **2005(3) Mh.L.J. 778,** this Court after considering the decision in the case of **Sethuraman (supra)** as well as **Adalat Prasad (supra)** has held that revision to the Sessions Court against an order of the Magistrate issuing process, is maintainable. An S.L.P. came to be filed against the decision of this Court in **V.K.Jain (supra)**. The said S.L.P. i.e.(Cri.) No.3196 of 2005 came to be dismissed by order dated 12.7.2005. In view of

the above, it would be appropriate that the petitioners prefer a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the petitioners states that necessary revision application will be preferred within a period of six weeks from today.

5. On the necessary revision being preferred by the petitioners before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties. As far as delay in preferring revision application is concerned, the learned Sessions Judge shall condone the delay if any, in filing the revision application. In the meantime, the proceedings before the trial Court are stayed for a period of six weeks from today.

6. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]